

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 11-1558

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 7:30 p.m., June 20, 2011, on the application of **NATHAN D. and LINDA B. BLYTHE** ("Applicants"). The Applicants are requesting a variance of the required 100-foot Shoreline Development Buffer to 46 feet to expand their residence with an enclosed porch of approximately 253 square feet. The current residence is located 46 feet from Mean High Water. The property is located on 23040 Twin Pines Road, Bozman, Maryland 21612 in the Rural Residential (RR) zone. It is owned by the Applicants. The request is made in accordance with Chapter 190 Zoning, Article VI, §190-139 C (2) and Article IX, §190-182 of the Talbot County Code ("Code").

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, Rush Moody, Betty Crothers, and John Mathis. Carmen L. Farmer, Esquire, 114 Bay Street, Building C, Easton, Maryland 21601, represented the Applicants. Glenn D. Klakring was the attorney for the Board of Appeals.

It was noted for the record that all members of the Board had visited the site.

The following exhibits were offered and admitted into evidence as Board's Exhibits as indicated:

1. Application for variances with Attachment A.
2. Copy of a portion of the Talbot County tax map with the property highlighted.
3. Appeals Notice of Public Hearing.
4. Certificate of publication of the Notice of Public Hearing from the Star-Democrat.
5. Notice of hearing with a list of nearby property owners attached (two pages).
6. Copy of critical area variance requirements from the Code with the written responses of the Applicants to each applicable warrant (three pages).

7. Staff memorandum.
8. Sign maintenance agreement.
9. Site plans.
10. Elevation and floor plans.
11. Letter from the Critical Area Commission, dated June 20, 2011.
12. Independent Procedure Disclosure and Acknowledgement Form.
13. (No exhibit).
14. Copy of Board of Appeals decision in Appeal No. 1248, dated March 24, 2003.
15. Letter of authorization for Carmen L. Farmer, Esquire and Armistead, Griswold, Lee & Rust, P.A.
16. Photograph showing area of variance request.
17. Aerial photograph of subject property.
18. Letter of support from Albert and Ann Cartenuto, dated June 4, 2011.
19. Letter of support from Marianne Yost, dated June 3, 2011.
20. Letter of support from Janet Hammed, dated June 11, 2011.

In her opening statement Ms. Farmer said that the variance request was to complete a porch that was part of a renovation plan approved by the Board of Appeals in 2003 with the granting of a variance that subsequently expired. The Applicants began construction of the porch in 2003 but were unable to complete it for financial reasons. They now wish to complete the porch as originally planned and approved by the Board on 2003.

The Applicants were able to complete the foundation and deck of the porch before they had to stop work on the project. Because the deck was designed to be covered and enclosed it is level and has since suffered weather damage. They propose to repair any damage and complete the porch as soon as approved. They will not create any new impervious surface or floor area.

Mrs. Blythe testified that they want to have a place to enjoy the outside without air conditioning and with protection from insects. Their home is small. They enjoy the small home and its proximity to neighbors. The porch area is the best vantage point from the home to enjoy the waterfront.

Ms. Farmer added that the home is a two-bedroom house of about 1,900 square feet.

Mr. Blythe testified that the original home had an opening for a porch in the same location. In addition to the porch, the last variance was for infill to make the house rectangular. They intended to complete the porch in 2003 but he was laid off from work and they could not afford to do so. He confirmed that the existing structure was built to be an enclosed porch and not as a deck.

Ms. Farmer asked that the Board not impose a perpetual prohibition of decks or housing additions toward the shoreline, a condition of approval suggested by the Critical Area Commission. She also said that the Applicants have provided mitigation in accordance with the 2003 variance as if the project were completed. The mitigation included the area of the porch and there is no need for further mitigation for the proposed completion of the porch approved by the Board in 2003.

Mrs. Blythe affirmed that the mitigation required by the 2003 decision had to be in place before they received their original building permit. It is still there. She added that the house was originally constructed in 1956 and they purchased it in 1991.

No one appeared in opposition to the proposed variance.

The Board then considered the application. After discussion and upon motion, duly made and seconded, the Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.
2. Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of the ordinance result in unwarranted hardship to the property owner. The Board previously approved the porch as part of a renovation plan for the home in 2003. Due to unforeseen circumstances the Applicants

were unable to complete the renovations within the time limits of the previous variance. They are now only proposing to complete what was started with the Board's previous approval. The conditions and circumstances supporting the original variance have not changed.

3. A literal interpretation of the ordinance will deprive the property owner of rights commonly enjoyed by other property owners in the same zone.
4. The granting of the variance will not confer upon the property owner any special privilege that would be denied by the ordinance to other owners of lands or structures within the same zoning district.
5. The variance request is not based on conditions or circumstances which are the result of actions by the Applicant, including the commencement of development activity before an application for variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.
6. The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat, and the granting of the variance will be in harmony with the general spirit and intent of the state Critical Area Law and the Critical Area Program. The mitigation requirement proposed by the Critical Area Commission in its comments is redundant and unnecessary because it has already been accomplished by the applicants, as previously described. The Board also finds that the Commission's suggested condition imposing a prohibition in perpetuity on the property is unwarranted in the facts of this case.
7. The variance does not exceed the minimum adjustment necessary to relieve the unwarranted hardship.

8. It is not possible for the Applicants to reconfigure their lot to comply with the Code without a variance.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the Applicants, **NATHAN D. and LINDA B. BLYTHE** (Appeal No. 11-1558) are **GRANTED** the requested variance consistent with the evidence presented to the Board of Appeals.

The vote of the Board was five to zero to approve the variance.

The variance granted by this decision will lapse and become null and void eighteen months following the date of this opinion, unless, prior to the expiration date, construction is commenced and diligently pursued toward completion.


GIVEN OVER OUR HANDS, this **14TH** day of **JULY**, 2011.

TALBOT COUNTY BOARD OF APPEALS


Paul Shortall, Jr., Chairman


Phillip Jones, Vice Chairman

Unavailable for Signature
Rush Moody


Betty Crothers

Unavailable for Signature
John Mathis